APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,360	05/23/2001	James Allen Clark	2705-167	4571

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EXAMINER
SHANG, ANNAN Q

ART UNIT	PAPER NUMBER
2617	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _20 June 2005_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-31_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-31_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All   b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35

·U.S.C. 102 that form the basis for the rejections under this section made in this Office

action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1-5, 7-11, 13-15 and 17-31 are rejected under 35 U.S.C. 102(b) as

being anticipated by **Herz et al (5,758,257).**

As to claims 1-2, note the **Herz** reference figures 4-6 and 9-10, discloses system

and method for scheduling broadcast (analog or digital), in a one-way (fig. 4), two-way

cable system return and two telephone systems return (figs 5-6 and col. 41, lines 42-

56), of and access to video programs and other data using customer profiles and further

discloses a network termination unit (Set Top Multimedia Terminal 'STMT,' figs. 9-10),

which receives from CATV system, wireless cable, DBS, telco systems, off air, etc.,

comprising:

Set Top Multimedia Terminal 'STMT" includes a port to receive content signals

(video programs, news, music, etc., col. 9, lines 20-25 and col. 46, lines 24-35, from

Head end 408/502), a demodulator operable to demodulate the content signals into

display signals and a decoder operable to decode the demodulated content signals into

· display signals (figs 1-3 and col. 24, line 53-col. 25, line 6), note that the analog or

digital data or bit stream received is demodulated, decoded, etc., into command and

control signals, processed, before displaying on a display device or TV;

  a module (Processor 906 or Microprocessor 1006 'P/MP' 906/1006, col. 45, lines

34-col. 46, line 18 and line 43-col. 47, line 1+) operable to detect use patterns of the

user viewing display signals (col. 14, lines 4-10, col. 25, lines 31-44, col. 26, line 51-col.

27, line 6 and col. 29, line 52-col. 30, line 40) on a viewing device (TV) and to transmit

the use patterns as use pattern packets (col. 40, line 66-col. 41, line 18, col. 42, lines

25-67), note that M/MP 906/1006 monitors usage or watched multimedia patterns and

calculates an agreement matrix of each watched or interacted multimedia, such as

different movies, games, news, music, etc., the various characteristics used for the

define programs (col. 19, line 6-col. 21, line 1+), formats accordingly to include the

appropriate packet header to identifier the multimedia type and transmits to the Head

end, which detects services or multimedia available (col. 9, line 20-27, line 62-col. 10,

line 20) to the STMT and targets multimedia to the STMT based on the matrix or profile.

  As to claim 3, Herz further discloses where STMT comprises a

demodulator/modulator or cable modem to demodulator and modulator 1024 signals

over the CATV cable network (fig. 10, lines 6-9).

  Claim 4 is met as previously discussed with respect to claim 1.

  As to claim 5, Herz further discloses where the STMT/TV includes a computing

device (col. 45, lines 9-55 and col. 46, lines 24-61).

  Claim 7 is met as previously discussed with respect to claim 1.

  Claim 8 is met as previously discussed with respect to claim 1.

As to claim 9, the claimed "a content analyzer, comprising..." is composed of the same structural elements of previously rejected claim 1.

As to claim 10, Herz further disclose where the content analyzer resides at the distribution hub (col. 45, line 34-col. 46, line 18 and line 43-col. 47, line 1+).

As to claim 11, Herz further disclose where the content analyzer resides at the Head end (col. 42, lines 25-67).

Claim 13 is met as previously discussed with respect to claim 1.

Claim 14 is met as previously discussed with respect to claim 1.

As to claim 15, the claimed "a method of transmitting use patterns, the method comprising..." is composed of the same structural elements of previously rejected claim 1.

Claim 17 is met as previously discussed with respect to claim 1.

As to claims 18-20, Herz further tracks video content, programs, advertisements, etc., delivery to STMT (col. 23, lines 10-18, col. 29, lines 31-50, col. 41, lines 20-25 and col. 47, line 53-col. 48, line 4)

Claim 21 is met as previously discussed with respect to claim 1

As to claim 22, the claimed "a network termination unit, comprising..." is composed of the same structural elements of previously rejected claim 1.

Claim 23 is met as previously discussed with respect to claim 1.

Claim 24 is met as previously discussed with respect to claim 3.

Claim 25 is met as previously discussed with respect to claim 1.

As to claim 26, the claimed "a content analyzer, comprising..." is composed of

the same structural elements of previously rejected claim 1.

Claim 27 is met as previously discussed with respect to claim 10.

Claim 28 is met as previously discussed with respect to claim 11.

Claim 29 is met as previously discussed with respect to claim 1.

As to claims 30-31, the claimed "an article containing machine-readable code...

comprising..." is composed of the same structural elements of previously rejected claim

1.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being

unpatentable over **Herz et al (5,758,257)** as applied to claims 1, 10 and 15 above, and

in view of **Zintel (6,779,004).**

As to claims 6, 12 and 16, Herz fails to explicitly teach where the use pattern

packets are identified as such using a content discovery protocol.

However, note the **Zintel** reference disclose dynamic connectivity among

distributed devices and services, where packets are identified using discovery protocol

(col. 4, lines 56-65, col. 5, lines 49-56, col. 7, lines 17-26 and col. 46, line 33-46).

Therefore it would have been obvious to one of ordinary skill in the art to

incorporate the teaching of Zintel into the system of Herz in order to enable the client or

the service provider to automatically find controlled devices and services.

Conclusion

5.   The prior art made of record and not relied upon is considered pertinent to

applicant's disclosure.

Del Sesto et al (6,530,082) disclose configurable monitoring of program

viewership and usage of interactive applications.

Riggins (6,195,090) discloses interactive sporting-event monitoring system.

6.   Any inquiry concerning this communication or earlier communications from

the examiner should be directed to **Annan Q. Shang** whose telephone number is **571-

272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone

number for the organization where this application or proceeding is assigned is **703-

872-9306.**

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the **Electronic**

Business Center (EBC) at 866-217-9197 (toll-free).

Annan Q. Shang.

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